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8 COUNTY OF RIVERSIDE, RIVERSIDE  
COUNTY SHERIFF CHAD BIANCO and  
9 DEPUTY DUNCAN

10  
11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 S.V., A Minor, Individually, And As  
Personal Representative Of The Estate  
14 Of Cristian Viramontes, By And  
Through Her Guardian Ad Litem, Elba  
15 Cervantes; Naomi Bravo Individually,  
Esteban Viramontes, individually,

16 Plaintiffs,

17 v.

18 COUNTY OF RIVERSIDE, a  
19 Governmental Agency; RIVERSIDE  
COUNTY SHERIFF CHAD BIANCO,  
20 in his individual and official capacity,  
Deputy DUNCAN, individually;  
21 Correctional Corporal CRAIG  
HARRIS, individually; Correctional  
22 Deputy WILLIAM ROBINSON,  
individually; Correctional Deputy  
23 JASON NGUYEN, individually;  
Correctional Deputy MIRANDA,  
24 individually; JULIE COX, individually;  
NAJIA OUGZIN-MCILVOY,  
25 individually; JOCELYN MENDOZA  
CID individually; DR. THOMAS  
26 MCNAHAN, M.D., individually; and  
DOES 9-10, inclusive,

27 Defendants.  
28

Case No. 5:23-cv-00860-SSS-KK  
*Honorable Sunshine S. Sykes, District  
Judge; Honorable Kenly Kiya Kato,  
Magistrate Judge*

**DEFENDANTS COUNTY OF  
RIVERSIDE, RIVERSIDE COUNTY  
SHERIFF CHAD BIANCO, AND  
DEPUTY DUNCAN'S ANSWER TO  
FIRST AMENDED COMPLAINT;  
DEMAND FOR JURY TRIAL**

1 Defendants COUNTY OF RIVERSIDE, RIVERSIDE COUNTY SHERIFF  
2 CHAD BIANCO and DEPUTY DUNCAN (“Defendants”) hereby Answer Plaintiffs’  
3 First Amended Complaint for Damages (filed November 2, 2023, hereinafter referred  
4 to as the “FAC”) and defendants hereby admit, deny, and allege as follows:

5 1. Answering Paragraph 1 of the FAC, under the header “Preliminary  
6 Statement” Defendants do not have sufficient knowledge, or information or belief, to  
7 enable Defendants to answer the allegations contained within this paragraph, as stated,  
8 and on those grounds deny generally and specifically each and every allegation  
9 contained therein – and Defendants deny all liability and/or wrongdoing.

10 2. Answering Paragraph 2 of the FAC, under the header “Preliminary  
11 Statement” Defendants do not have sufficient knowledge, or information or belief, to  
12 enable Defendants to answer the allegations contained within this paragraph, as stated,  
13 and on those grounds deny generally and specifically each and every allegation  
14 contained therein – and Defendants deny all liability and/or wrongdoing.

15 3. Answering Paragraph 3 of the FAC, under the header “Preliminary  
16 Statement,” Defendants deny generally and specifically each and every allegation  
17 contained therein, and Defendants deny all liability and/or wrongdoing.

18 4. Answering Paragraph 4 of the FAC, under the header “Preliminary  
19 Statement,” Defendants deny generally and specifically each and every allegation  
20 contained therein, and Defendants deny all liability and/or wrongdoing.

21 5. Answering Paragraph 5 of the FAC, under the header “Jurisdiction and  
22 Venue,” Defendants deny generally and specifically each and every allegation  
23 contained therein, and Defendants deny all liability and/or wrongdoing.

24 6. Answering Paragraph 6 of the FAC, under the header “Jurisdiction and  
25 Venue,” Defendants admit the allegations that plaintiff submitted a government claim  
26 form.

27 7. Answering Paragraph 7 of the FAC, under the header “Jurisdiction and  
28 Venue,” Defendants admit the allegation that the Clerk of the Board of Supervisors

1 rejected the government tort claims of Naomi Bravo and Sofia Viramontes.

2 8. Answering Paragraph 8 of the FAC, under the header "Jurisdiction and  
3 Venue," Defendants admit the Court has jurisdiction over the federal civil rights claim  
4 and supplemental jurisdiction over any state-law claims.

5 9. Answering Paragraph 9 of the FAC, under the header "Preliminary  
6 Statement" Defendants admit that Christian Viramontes was an inmate at the Robert  
7 Presley Detention Center operated by the Riverside County Sheriff's Department.

8 10. Answering Paragraph 10 of the FAC, under the header "Jurisdiction and  
9 Venue," Defendants admit that Venue is proper in this Court pursuant to 28 U.S.C. §  
10 1391(b) and (c).

11 11. Answering Paragraph 11 of the FAC, under the header "Parties"  
12 Defendants do not have sufficient knowledge, or information or belief, to enable  
13 Defendants to answer the allegations contained within this paragraph, as stated, and  
14 on those grounds deny generally and specifically each and every allegation contained  
15 therein – and Defendants deny all liability and/or wrongdoing.

16 12. Answering Paragraph 12 of the FAC, under the header "Parties"  
17 Defendants do not have sufficient knowledge, or information or belief, to enable  
18 Defendants to answer the allegations contained within this paragraph, as stated, and  
19 on those grounds deny generally and specifically each and every allegation contained  
20 therein – and Defendants deny all liability and/or wrongdoing.

21 13. Answering Paragraph 13 of the FAC, under the header "Parties"  
22 Defendants generally deny the allegations as phrased, and Defendants deny all  
23 liability and/or wrongdoing.

24 14. Answering Paragraph 14 of the FAC, under the header "Parties"  
25 Defendants contend the allegation is vague and ambiguous, and on those grounds  
26 deny generally and specifically each and every allegation contained therein – and  
27 Defendants deny all liability and/or wrongdoing.

28 15. Answering Paragraph 15 of the FAC, under the header "Parties"

1 Defendants contend the allegation is vague and ambiguous, and on those grounds  
2 deny generally and specifically each and every allegation contained therein – and  
3 Defendants deny all liability and/or wrongdoing.

4 16. Answering Paragraph 16 of the FAC, under the header “Jurisdiction and  
5 Venue," Defendants deny generally and specifically each and every allegation  
6 contained therein, and Defendants deny all liability and/or wrongdoing.

7 17. Answering Paragraph 17 of the FAC, under the header “Jurisdiction and  
8 Venue," Defendants do not have sufficient knowledge, or information or belief, to  
9 enable Defendants to answer the allegations contained within this paragraph, as stated,  
10 and on those grounds deny generally and specifically each and every allegation  
11 contained therein – and Defendants deny all liability and/or wrongdoing.

12 18. Answering Paragraph 18 of the FAC, under the header “Jurisdiction and  
13 Venue," Defendants do not have sufficient knowledge, or information or belief, to  
14 enable Defendants to answer the allegations contained within this paragraph, as stated,  
15 and on those grounds deny generally and specifically each and every allegation  
16 contained therein – and Defendants deny all liability and/or wrongdoing.

17 19. Answering Paragraph 19 of the FAC, under the header “Jurisdiction and  
18 Venue," Defendants do not have sufficient knowledge, or information or belief, to  
19 enable Defendants to answer the allegations contained within this paragraph, as stated,  
20 and on those grounds deny generally and specifically each and every allegation  
21 contained therein – and Defendants deny all liability and/or wrongdoing.

22 20. Answering Paragraph 20 of the FAC, under the header “Jurisdiction and  
23 Venue," Defendants do not have sufficient knowledge, or information or belief, to  
24 enable Defendants to answer the allegations contained within this paragraph, as stated,  
25 and on those grounds deny generally and specifically each and every allegation  
26 contained therein – and Defendants deny all liability and/or wrongdoing.

27 21. Answering Paragraph 21 of the FAC, under the header “Jurisdiction and  
28 Venue," Defendants do not have sufficient knowledge, or information or belief, to

1 enable Defendants to answer the allegations contained within this paragraph, as stated,  
2 and on those grounds deny generally and specifically each and every allegation  
3 contained therein – and Defendants deny all liability and/or wrongdoing.

4 22. Answering Paragraph 22 of the FAC, under the header “Jurisdiction and  
5 Venue,” Defendants do not have sufficient knowledge, or information or belief, to  
6 enable Defendants to answer the allegations contained within this paragraph, as stated,  
7 and on those grounds deny generally and specifically each and every allegation  
8 contained therein – and Defendants deny all liability and/or wrongdoing.

9 23. Answering Paragraph 23 of the FAC, under the header “Jurisdiction and  
10 Venue,” Defendants do not have sufficient knowledge, or information or belief, to  
11 enable Defendants to answer the allegations contained within this paragraph, as stated,  
12 and on those grounds deny generally and specifically each and every allegation  
13 contained therein – and Defendants deny all liability and/or wrongdoing.

14 24. Answering Paragraph 24 of the FAC, under the header “Jurisdiction and  
15 Venue,” Defendants do not have sufficient knowledge, or information or belief, to  
16 enable Defendants to answer the allegations contained within this paragraph, as stated,  
17 and on those grounds deny generally and specifically each and every allegation  
18 contained therein – and Defendants deny all liability and/or wrongdoing.

19 25. Answering Paragraph 25 of the FAC, under the header “Jurisdiction and  
20 Venue,” Defendants contend the allegation is vague and ambiguous, and on those  
21 grounds deny generally and specifically each and every allegation contained therein  
22 – and Defendants deny all liability and/or wrongdoing.

23 26. Answering Paragraph 26 of the FAC, under the header “Jurisdiction and  
24 Venue,” Defendants do not have sufficient knowledge, or information or belief, to  
25 enable Defendants to answer the allegations contained within this paragraph, as stated,  
26 and on those grounds deny generally and specifically each and every allegation  
27 contained therein – and Defendants deny all liability and/or wrongdoing.

28 27. Answering Paragraph 27 of the FAC, under the header “Jurisdiction and

Venue," Defendants deny generally and specifically each and every allegation contained therein, and Defendants deny all liability and/or wrongdoing.

28. Answering Paragraph 28 of the FAC, under the header "Factual Allegations," Defendants admit the allegations.

29. Answering Paragraph 29 of the FAC, under the header "Factual Allegations," Defendants generally deny the allegations as phrased, and Defendants deny all liability and/or wrongdoing.

30. Answering Paragraph 30 of the FAC, under the header "Factual Allegations," Defendants generally and specifically each and every allegation contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

31. Answering Paragraph 31 of the FAC, under the header "Factual Allegations," Defendants deny generally and specifically each and every allegation contained therein, and Defendants deny all liability and/or wrongdoing.

32. Answering Paragraph 32 of the FAC, under the header "Factual Allegations," Defendants deny generally and specifically each and every allegation contained therein, and Defendants deny all liability and/or wrongdoing.

33. Answering Paragraph 33 of the FAC, under the header "Factual Allegations," Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein – and Defendants deny all liability and/or wrongdoing. Further, paragraph 33 contains legal conclusions and argument as to which no response is required.

34. Answering Paragraph 34 of the FAC, under the header "Factual Allegations," Defendants deny generally each and every allegation contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

35. Answering Paragraph 35 of the FAC, under the header "Factual Allegations," Defendants deny generally each and every allegation contained therein



1 as phrased, and Defendants deny all liability and/or wrongdoing.

2 36. Answering Paragraph 36 of the FAC, under the header "Factual  
3 Allegations," Defendants deny generally and specifically each and every allegation  
4 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

5 37. Answering Paragraph 37 of the FAC, under the header "Factual  
6 Allegations," Defendants deny generally and specifically each and every allegation  
7 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

8 38. Answering Paragraph 38 of the FAC, under the header "Factual  
9 Allegations," Defendants deny generally and specifically each and every allegation  
10 contained therein, and Defendants deny all liability and/or wrongdoing. Further,  
11 paragraph 38 contains legal conclusions and argument as to which no response is  
12 required.

13 39. Answering Paragraph 39 of the FAC, under the header "Factual  
14 Allegations," Defendants contend the allegations are vague and ambiguous.  
15 Defendants deny generally and specifically each and every allegation contained  
16 therein, and Defendants deny all liability and/or wrongdoing.

17 40. Answering Paragraph 40 of the FAC, under the header "Factual  
18 Allegations," Defendants deny generally and specifically each and every allegation  
19 contained therein, and Defendants deny all liability and/or wrongdoing. Further,  
20 paragraph 40 contains legal conclusions and argument as to which no response is  
21 required.

22 41. Answering Paragraph 41 of the FAC, under the header "Factual  
23 Allegations," Defendants deny generally and specifically each and every allegation  
24 contained therein, and Defendants deny all liability and/or wrongdoing.

25 42. Answering Paragraph 42 of the FAC, under the header "Factual  
26 Allegations," Defendants deny generally and specifically each and every allegation  
27 contained therein, and Defendants deny all liability and/or wrongdoing.

28 43. Answering Paragraph 43 of the FAC, under the header "Factual

1 Allegations," Defendants contend the allegations are vague and ambiguous.  
2 Defendants deny generally and specifically each and every allegation contained  
3 therein, and Defendants deny all liability and/or wrongdoing.

4 44. Answering Paragraph 44 of the FAC, under the header "Factual  
5 Allegations," Defendants deny generally and specifically each and every allegation  
6 contained therein, and Defendants deny all liability and/or wrongdoing. Further,  
7 paragraph 44 contains legal conclusions and argument as to which no response is  
8 required.

9 45. Answering Paragraph 45 of the FAC, under the header "Factual  
10 Allegations," Defendants deny generally and specifically each and every allegation  
11 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

12 46. Answering Paragraph 46 of the FAC, under the header "Factual  
13 Allegations," Defendants deny generally and specifically each and every allegation  
14 contained therein, and Defendants deny all liability and/or wrongdoing.

15 47. Answering Paragraph 47 of the FAC, under the header "Factual  
16 Allegations," Defendants do not have sufficient knowledge, or information or belief,  
17 to enable Defendants to answer the allegations contained within this paragraph, as  
18 stated, and on those grounds deny generally and specifically each and every allegation  
19 contained therein – and Defendants deny all liability and/or wrongdoing.

20 48. Answering Paragraph 48 of the FAC, under the header "Factual  
21 Allegations," Defendants deny generally and specifically each and every allegation  
22 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

23 49. Answering Paragraph 49 of the FAC, under the header "Factual  
24 Allegations," Defendants deny generally and specifically each and every allegation  
25 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

26 50. Answering Paragraph 50 of the FAC, under the header "Factual  
27 Allegations," Defendants deny generally and specifically each and every allegation  
28 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.



1        51. Answering Paragraph 51 of the FAC, under the header "Factual  
2 Allegations," Defendants deny generally and specifically each and every allegation  
3 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

4        52. Answering Paragraph 52 of the FAC, under the header "Factual  
5 Allegations," Defendants deny generally and specifically each and every allegation  
6 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

7        53. Answering Paragraph 53 of the FAC, under the header "Factual  
8 Allegations," Defendants do not have sufficient knowledge, or information or belief,  
9 to enable Defendants to answer the allegations contained within this paragraph, as  
10 stated, and on those grounds deny generally and specifically each and every allegation  
11 contained therein – and Defendants deny all liability and/or wrongdoing.

12        54. Answering Paragraph 54 of the FAC, under the header "Factual  
13 Allegations," Defendants deny generally and specifically each and every allegation  
14 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

15        55. Answering Paragraph 55 of the FAC, under the header "Factual  
16 Allegations," Defendants deny generally and specifically each and every allegation  
17 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

18        56. Answering Paragraph 56 of the FAC, under the header "Factual  
19 Allegations," Defendants deny generally and specifically each and every allegation  
20 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

21        57. Answering Paragraph 57 of the FAC, under the header "Factual  
22 Allegations," Defendants deny generally and specifically each and every allegation  
23 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

24        58. Answering Paragraph 58 of the FAC, under the header "Factual  
25 Allegations," Defendants deny generally and specifically each and every allegation  
26 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

27        59. Answering Paragraph 59 of the FAC, under the header "Factual  
28 Allegations," Defendants generally deny the allegations as phrased, and Defendants

1 deny all liability and/or wrongdoing.

2       60. Answering Paragraph 60 of the FAC, under the header "Factual  
3 Allegations," Defendants deny generally and specifically each and every allegation  
4 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

5       61. Answering Paragraph 61 of the FAC, under the header "Factual  
6 Allegations," Defendants deny generally and specifically each and every allegation  
7 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

8       62. Answering Paragraph 62 of the FAC, under the header "Factual  
9 Allegations," Defendants deny generally and specifically each and every allegation  
10 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

11       63. Answering Paragraph 63 of the FAC, under the header "Factual  
12 Allegations," Defendants deny generally and specifically each and every allegation  
13 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

14       64. Answering Paragraph 64 of the FAC, under the header "Factual  
15 Allegations," Defendants deny generally and specifically each and every allegation  
16 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

17       65. Answering Paragraph 65 of the FAC, under the header "Factual  
18 Allegations," Defendants deny generally and specifically each and every allegation  
19 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

20       66. Answering Paragraph 66 of the FAC, under the header "Factual  
21 Allegations," Defendants deny generally and specifically each and every allegation  
22 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

23       67. Answering Paragraph 67 of the FAC, under the header "Factual  
24 Allegations," Defendants deny generally and specifically each and every allegation  
25 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

26       68. Answering Paragraph 68 of the FAC, under the header "Factual  
27 Allegations," Defendants deny generally and specifically each and every allegation  
28 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

1           69. Answering Paragraph 69 of the FAC, under the header "Factual  
2 Allegations," Defendants deny generally and specifically each and every allegation  
3 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.  
4 Further, paragraph 69 contains legal conclusions and argument as to which no  
5 response is required.

6           70. Answering Paragraph 70 of the FAC, under the header "Factual  
7 Allegations," Defendants deny generally and specifically each and every allegation  
8 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.  
9 Further, paragraph 70 contains legal conclusions and argument as to which no  
10 response is required.

11           71. Answering Paragraph 71 of the FAC, under the header "Factual  
12 Allegations," Defendants deny generally and specifically each and every allegation  
13 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.

14           72. Answering Paragraph 72 of the FAC, under the header "Factual  
15 Allegations," Defendants deny generally and specifically each and every allegation  
16 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.  
17 Further, paragraph 72 contains legal conclusions and argument as to which no  
18 response is required.

19           73. Answering Paragraph 73 of the FAC, under the header "Factual  
20 Allegations," Defendants deny generally and specifically each and every allegation  
21 contained therein as phrased, and Defendants deny all liability and/or wrongdoing.  
22 Further, paragraph 73 contains legal conclusions and argument as to which no  
23 response is required.

24           74. Answering Paragraph 74 of the FAC, under the header "Factual  
25 Allegations," Defendants do not have sufficient knowledge, or information or belief,  
26 to enable Defendants to answer the allegations contained within this paragraph, as  
27 stated, and on those grounds deny generally and specifically each and every allegation  
28 contained therein – and Defendants deny all liability and/or wrongdoing.

1        75. Answering Paragraph 75 of the FAC, under the header "Factual  
2 Allegations," Defendants admit the allegations contained therein.

3  
4        76. Answering Paragraph 76 of the FAC, under the header "FIRST CLAIM  
5 FOR RELIEF," Defendants repeat, reiterate, and re-allege all of the admissions and  
6 denials contained in the foregoing Answer which are set forth to each and every  
7 allegation contained in paragraphs 1 through 75 inclusive, of the FAC.

8        77. Answering Paragraph 77 of the FAC, under the header "FIRST CLAIM  
9 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
10 contained therein, and Defendants deny all liability and/or wrongdoing.

11        78. Answering Paragraph 78 of the FAC, under the header "FIRST CLAIM  
12 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
13 contained therein, and Defendants deny all liability and/or wrongdoing.

14        79. Answering Paragraph 79 of the FAC, under the header "FIRST CLAIM  
15 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
16 contained therein, and Defendants deny all liability and/or wrongdoing.

17        80. Answering Paragraph 80 of the FAC, under the header "FIRST CLAIM  
18 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
19 contained therein, and Defendants deny all liability and/or wrongdoing.

20        81. Answering Paragraph 81 of the FAC, under the header "FIRST CLAIM  
21 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
22 contained therein, and Defendants deny all liability and/or wrongdoing.

23        82. Answering Paragraph 82 of the FAC, under the header "FIRST CLAIM  
24 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
25 contained therein, and Defendants deny all liability and/or wrongdoing.

26        83. Answering Paragraph 83 of the FAC, under the header "FIRST CLAIM  
27 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
28 contained therein, and Defendants deny all liability and/or wrongdoing.

1           84. Answering Paragraph 84 of the FAC, under the header "FIRST CLAIM  
2 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
3 contained therein, and Defendants deny all liability and/or wrongdoing.

4           85. Answering Paragraph 85 of the FAC, under the header "FIRST CLAIM  
5 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
6 contained therein, and Defendants deny all liability and/or wrongdoing.

7           86. Answering Paragraph 86 of the FAC, under the header "FIRST CLAIM  
8 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
9 contained therein, and Defendants deny all liability and/or wrongdoing.

10          87. Answering Paragraph 87 of the FAC, under the header "FIRST CLAIM  
11 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
12 contained therein, and Defendants deny all liability and/or wrongdoing.

13          88. Answering Paragraph 88 of the FAC, under the header "FIRST CLAIM  
14 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
15 contained therein, and Defendants deny all liability and/or wrongdoing.

16          89. Answering Paragraph 89 of the FAC, under the header "FIRST CLAIM  
17 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
18 contained therein, and Defendants deny all liability and/or wrongdoing.

19          90. Answering Paragraph 90 of the FAC, under the header "FIRST CLAIM  
20 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
21 contained therein, and Defendants deny all liability and/or wrongdoing.

22          91. Answering Paragraph 91 of the FAC, under the header "FIRST CLAIM  
23 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
24 contained therein, and Defendants deny all liability and/or wrongdoing.

25          92. Answering Paragraph 92 of the FAC, under the header "FIRST CLAIM  
26 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
27 contained therein, and Defendants deny all liability and/or wrongdoing.

28          93. Answering Paragraph 93 of the FAC, under the header "FIRST CLAIM

1 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
2 contained therein, and Defendants deny all liability and/or wrongdoing.

3 94. Answering Paragraph 94 of the FAC, under the header "SECOND  
4 CLAIM FOR RELIEF," Defendants repeat, reiterate, and re-allege all of the  
5 admissions and denials contained in the foregoing Answer which are set forth to each  
6 and every allegation contained in paragraphs 1 through 93 inclusive, of the FAC.

7 95. Answering Paragraph 95 of the FAC, under the header "SECOND  
8 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
9 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

10 96. Answering Paragraph 96 of the FAC, under the header "SECOND  
11 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
12 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

13 97. Answering Paragraph 97 of the FAC, under the header "SECOND  
14 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
15 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

16 98. Answering Paragraph 98 of the FAC, under the header "SECOND  
17 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
18 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

19 99. Answering Paragraph 99 of the FAC, under the header "SECOND  
20 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
21 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

22 100. Answering Paragraph 100 of the FAC, under the header "SECOND  
23 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
24 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

25 101. Answering Paragraph 101 of the FAC, under the header "SECOND  
26 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
27 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

28 102. Answering Paragraph 102 of the FAC, under the header "THIRD



1 CLAIM FOR RELIEF," Defendants repeat, reiterate, and re-allege all of the  
2 admissions and denials contained in the foregoing Answer which are set forth to each  
3 and every allegation contained in paragraphs 1 through 101 inclusive, of the FAC.

4 103. Answering Paragraph 103 of the FAC, under the header "THIRD  
5 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
6 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

7 104. Answering Paragraph 104 of the FAC, under the header "THIRD  
8 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
9 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

10 105. Answering Paragraph 105 of the FAC, under the header "THIRD  
11 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
12 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

13 106. Answering Paragraph 106 of the FAC, under the header "THIRD  
14 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
15 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

16 107. Answering Paragraph 107 of the FAC, under the header "THIRD  
17 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
18 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

19 108. Answering Paragraph 108 of the FAC, under the header "THIRD  
20 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
21 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

22 109. Answering Paragraph 109 of the FAC, under the header "THIRD  
23 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
24 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

25 110. Answering Paragraph 110 of the FAC, under the header "FOURTH  
26 CLAIM FOR RELIEF," Defendants repeat, reiterate, and re-allege all of the  
27 admissions and denials contained in the foregoing Answer which are set forth to each  
28 and every allegation contained in paragraphs 1 through 109 inclusive, of the FAC.

111. Answering Paragraph 111 of the FAC, under the header "FOURTH CLAIM FOR RELIEF," Defendants deny generally and specifically each and every allegation contained therein, and Defendants deny all liability and/or wrongdoing.

112. Answering Paragraph 112 of the FAC, under the header "FOURTH CLAIM FOR RELIEF," Defendants deny generally and specifically each and every allegation contained therein, and Defendants deny all liability and/or wrongdoing

113. Answering Paragraph 113 of the FAC, under the header "FOURTH CLAIM FOR RELIEF," Defendants deny generally and specifically each and every allegation contained therein, and Defendants deny all liability and/or wrongdoing.

114. Answering Paragraph 114 of the FAC, under the header "FOURTH CLAIM FOR RELIEF," Defendants deny generally and specifically each and every allegation contained therein, and Defendants deny all liability and/or wrongdoing.

115. Answering Paragraph 115 of the FAC, under the header "FOURTH CLAIM FOR RELIEF," Defendants deny generally and specifically each and every allegation contained therein, and Defendants deny all liability and/or wrongdoing.

116. Answering Paragraph 116 of the FAC, under the header "FIFTH CLAIM FOR RELIEF," Defendants repeat, reiterate, and re-allege all of the admissions and denials contained in the foregoing Answer which are set forth to each and every allegation contained in paragraphs 1 through 115 inclusive, of the FAC.

117. Answering Paragraph 117 of the FAC, under the header "FIFTH CLAIM FOR RELIEF," Defendants deny generally and specifically each and every allegation contained therein, and Defendants deny all liability and/or wrongdoing.

118. Answering Paragraph 118 of the FAC, under the header "FIFTH CLAIM FOR RELIEF," Defendants deny generally and specifically each and every allegation contained therein, and Defendants deny all liability and/or wrongdoing.

119. Answering Paragraph 119 of the FAC, under the header "FIFTH CLAIM FOR RELIEF," Defendants deny generally and specifically each and every allegation contained therein, and Defendants deny all liability and/or wrongdoing.

1 120. Answering Paragraph 120 of the FAC, under the header "FIFTH CLAIM  
2 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
3 contained therein, and Defendants deny all liability and/or wrongdoing.

4 121. Answering Paragraph 121 of the FAC, under the header "FIFTH CLAIM  
5 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
6 contained therein, and Defendants deny all liability and/or wrongdoing.

7 122. Answering Paragraph 122 of the FAC, under the header "FIFTH CLAIM  
8 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
9 contained therein, and Defendants deny all liability and/or wrongdoing.

10 123. Answering Paragraph 123 of the FAC, under the header "FIFTH CLAIM  
11 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
12 contained therein, and Defendants deny all liability and/or wrongdoing.

13 124. Answering Paragraph 124 of the FAC, under the header "FIFTH CLAIM  
14 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
15 contained therein, and Defendants deny all liability and/or wrongdoing.

16 125. Answering Paragraph 125 of the FAC, under the header "FIFTH CLAIM  
17 FOR RELIEF," Defendants deny generally and specifically each and every allegation  
18 contained therein, and Defendants deny all liability and/or wrongdoing.

19 126. Answering Paragraph 126 of the FAC, under the header "SIXTH  
20 CLAIM FOR RELIEF," Defendants repeat, reiterate, and re-allege all of the  
21 admissions and denials contained in the foregoing Answer which are set forth to each  
22 and every allegation contained in paragraphs 1 through 125 inclusive, of the FAC.

23 127. Answering Paragraph 127 of the FAC, under the header "SIXTH  
24 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
25 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

26 128. Answering Paragraph 128 of the FAC, under the header "SIXTH  
27 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
28 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

1           129. Answering Paragraph 129 of the FAC, under the header "SIXTH  
2 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
3 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

4           130. Answering Paragraph 130 of the FAC, under the header "SEVENTH  
5 CLAIM FOR RELIEF," Defendants repeat, reiterate, and re-allege all of the  
6 admissions and denials contained in the foregoing Answer which are set forth to each  
7 and every allegation contained in paragraphs 1 through 129 inclusive, of the FAC.

8           131. Answering Paragraph 131 of the FAC, under the header "SEVENTH  
9 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
10 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

11           132. Answering Paragraph 132 of the FAC, under the header "SEVENTH  
12 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
13 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

14           133. Answering Paragraph 133 of the FAC, under the header "SEVENTH  
15 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
16 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

17           134. Answering Paragraph 134 of the FAC, under the header "SEVENTH  
18 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
19 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

20           135. Answering Paragraph 135 of the FAC, under the header "SEVENTH  
21 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
22 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

23           136. Answering Paragraph 136 of the FAC, under the header "SEVENTH  
24 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
25 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

26           137. Answering Paragraph 137 of the FAC, under the header "SEVENTH  
27 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
28 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

1           138. Answering Paragraph 138 of the FAC, under the header "SEVENTH  
2 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
3 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

4           139. Answering Paragraph 139 of the FAC, under the header "SEVENTH  
5 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
6 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

7           140. Answering Paragraph 140 of the FAC, under the header "SEVENTH  
8 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
9 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

10           141. Answering Paragraph 141 of the FAC, under the header "EIGHTH  
11 CLAIM FOR RELIEF," Defendants repeat, reiterate, and re-allege all of the  
12 admissions and denials contained in the foregoing Answer which are set forth to each  
13 and every allegation contained in paragraphs 1 through 140 inclusive, of the FAC.

14           142. Answering Paragraph 142 of the FAC, under the header "EIGHTH  
15 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
16 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

17           143. Answering Paragraph 143 of the FAC, under the header "EIGHTH  
18 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
19 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

20           144. Answering Paragraph 144 of the FAC, under the header "NINTH  
21 CLAIM FOR RELIEF," Defendants repeat, reiterate, and re-allege all of the  
22 admissions and denials contained in the foregoing Answer which are set forth to each  
23 and every allegation contained in paragraphs 1 through 143 inclusive, of the FAC.

24           145. Answering Paragraph 145 of the FAC, under the header "NINTH  
25 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every  
26 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

27           146. Answering Paragraph 146 of the FAC, under the header "NINTH  
28 CLAIM FOR RELIEF," Defendants deny generally and specifically each and every

1 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

2 147. Answering Paragraph 147 of the FAC, under the header “NINTH  
3 CLAIM FOR RELIEF,” Defendants deny generally and specifically each and every  
4 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

5 148. Answering Paragraph 148 of the FAC, under the header “NINTH  
6 CLAIM FOR RELIEF,” Defendants deny generally and specifically each and every  
7 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

8 149. Answering Paragraph 149 of the FAC, under the header “NINTH  
9 CLAIM FOR RELIEF,” Defendants deny generally and specifically each and every  
10 allegation contained therein, and Defendants deny all liability and/or wrongdoing.

11 150. Answering plaintiffs’ Prayer For Relief, including subsections (1)-(5),  
12 Defendants deny all liability to plaintiff, including, but not limited to, all liability for  
13 any and all damages, including both survival and wrongful death damages; funeral  
14 and burial expenses; statutory damages; punitive damages; interest; costs of any kind;  
15 attorneys’ fees; or for any relief of any kind from Defendants to plaintiffs.

16 151. To the extent plaintiffs assert any other claims or contentions not  
17 specifically addressed herein above, Defendants generally and specifically deny each  
18 and every remaining allegation and/or claim.

19 **AFFIRMATIVE DEFENSES**

20 1. As separate and affirmative defenses, Defendants allege as follows<sup>1</sup>:

21 **FIRST AFFIRMATIVE DEFENSE**

22 **(Failure to State a Claim for Relief)**

23 2. Plaintiffs’ FAC, and each alleged cause of action in it, fails to state a  
24 claim upon which relief can be granted.

25 3. Plaintiffs’ FAC also fails to state a claim against any Defendant in this  
26 action.

27 \_\_\_\_\_  
28 <sup>1</sup> For purposes of the affirmative defenses, affirmative defenses that reference “plaintiffs” shall also be construed to apply, wherever feasible, to plaintiffs’ decedent.



1 4. Plaintiffs' claims are potentially time-barred by the operative statute(s)  
2 of limitations (including, but not limited to, California Code of Civil Procedure §  
3 335.1).

4 **SECOND AFFIRMATIVE DEFENSE**

5 **(Tort Claims Act Violation)**

6 5. This action is barred by the plaintiffs' failure to fully comply with the  
7 government tort claims presentation requirements, California Government Code §  
8 900, *et seq.*, including but not limited to §§ 900, 900.4, 901, 905, 905.2, 910, 911,  
9 911.2, 911.4, 945.4, 945.6, 946.6, 950.2, and 950.6, to the extent applicable.

10 6. The FAC is barred based on plaintiffs' failure to exhaust administrative  
11 remedies prior to filing this lawsuit.

12 7. Plaintiffs' recovery is barred for failure to timely comply with the  
13 provisions of the claims statutes, including, but not limited to California Government  
14 Code §§ 901, 905, 905.2, 911.2, 945.4, 945.6, 950.2.

15 8. Plaintiffs' recovery is barred because the causes of action stated in the  
16 FAC do not correspond with the legal claims asserted in plaintiffs' written claim. The  
17 FAC thereby alleges legal bases for recovery which are not fairly reflected in the  
18 written claim.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(Waiver, Estoppel, Unclean Hands)**

21 9. Defendants allege that plaintiffs' actions are barred by reason of conduct,  
22 actions and inactions of plaintiffs which amount to and constitute a waiver of any  
23 right plaintiffs may or might have had in reference to the matters and things alleged  
24 in the FAC, or that otherwise estop plaintiffs from recovery in this action, including  
25 but not limited to the doctrine of unclean hands.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 **(Failure to Mitigate Damages)**

28 10. Plaintiffs' claims are barred or limited to the extent plaintiffs failed to

1 mitigate plaintiffs' injuries or damages, if there were any. Plaintiffs have failed to  
2 mitigate the damages, if any, which plaintiffs have sustained, and to exercise  
3 reasonable care to avoid the consequences of harms, if any, in that, among other  
4 things, plaintiffs have failed to use reasonable diligence in caring for any injuries,  
5 failed to use reasonable means to prevent aggravation of any injuries and failed to  
6 take reasonable precautions to reduce any injuries and damages.

7 **FIFTH AFFIRMATIVE DEFENSE**

8 **(Contributory and/or Comparative Liability)**

9 11. Plaintiffs' claims are barred or limited by plaintiffs' and/or decedent's  
10 contributory/comparative negligence or other conduct, acts, or omissions, and to the  
11 extent any plaintiff and/or the decedent suffered any injury or damages, it was the  
12 result of plaintiffs' and/or decedent's own negligent or deliberate actions or  
13 omissions.

14 12. Plaintiffs' recovery is barred because any injury or damage suffered by  
15 plaintiffs was caused solely by reason of the plaintiffs' decedent's wrongful acts and  
16 conduct and the willful resistance to a peace officer in the discharge their duties. The  
17 conduct set forth in the FAC, if and to the extent it occurred, was privileged and  
18 justified and done with a good faith belief that it was correct and no action may be  
19 taken against the answering Defendants on account of such conduct.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 **(Public Entity/Employee Immunity for Others' Torts)**

22 13. Plaintiffs' recovery is barred because public entities and employees are  
23 immune from liability for any injury caused by the act or omission of another person.  
24 Gov. Code §§ 815 *et seq.*, 820.2 *et seq.*

25 14. The answering Defendants are informed and believe and thereon allege  
26 that if plaintiffs sustained any injury or damages, such injury or damages were solely  
27 caused or contributed to by the wrongful conduct of other defendants and/or entities  
28 or persons other than the answering Defendants. To the extent that plaintiffs'

1 damages were so caused, any recovery by plaintiffs as against the answering  
2 Defendants should be subject to proportionately comparative equitable  
3 indemnity/contribution from such third parties.

4 **SEVENTH AFFIRMATIVE DEFENSE**

5 **(Public Entity/Employee Immunity for Discretionary Acts)**

6 15. There is no liability for any injury or damages, if any there were,  
7 resulting from an exercise of discretion vested in a public employee, whether or not  
8 such discretion be abused. Gov. Code § 815.2, 820.2, 820.4, 820.8, 820 *et seq.*

9 16. Plaintiffs' recovery is barred because public entities and employees are  
10 immune from liability for discharging their mandatory duties with reasonable  
11 diligence.

12 17. A public employee may not be held liable for injuries or damages, if any,  
13 caused by failure to adopt or by adoption of an enactment or by failure to enforce an  
14 enactment and/or law, for an injury caused by his issuance, denial, suspension or  
15 revocation or by his failure or refusal to issue, deny, suspend or revoke, any permit,  
16 license, certificate, approval, order, or similar authorization, where he is authorized  
17 by enactment to determine whether or not such authorization should be issued, denied,  
18 suspended or revoked, pursuant to Government Code §§ 818.2, 818.4, 818.8, 821 and  
19 821.2. Based thereon, the answering defendants are immune from liability for any  
20 injuries claimed by plaintiffs, herein.

21 18. Defendant(s) is/are immune for any detriment resulting from any of its  
22 actions or omissions at the time of the incident of which plaintiffs complain pursuant  
23 to Government Code § 810 *et seq.*, 815 *et seq.*, 820 *et seq.*, and 845 *et seq.*, including,  
24 but not limited to, §§ 810, 810.2, 810.4, 810.6, 810.8, 811, 811.2, 811.4, 811.6, 811.8,  
25 820.6, 820.8, 821, 821.2, 821.4, 821.6, 821.8, 822.2, 830.5, 830.6, 835.4, 844.6, and  
26 Government Code §§ 854, *et seq.*, including, but not limited to, §§ 845.6, 854.6,  
27 854.8(a)(2), and §§ 855.4, 855.6, 855.8 and 856.4.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Public Entity Immunity)**

19. To the extent that the FAC attempts to predicate liability upon any public entity defendant or any employee thereof for purported negligence in retention, hiring, employment, training, or supervision of any public employee, such liability is barred by Government Code sections 815.2 and 820.2 and *Herndon v. County of Marin* (1972) 25 Cal. App. 3d 933, 935, 936, *rev'd on other grounds by Sullivan v. County of Los Angeles* (1974) 12 Cal.3d 710; and by the lack of any duty running to plaintiffs; by the fact that any such purported act or omission is governed exclusively by statute and is outside the purview of any public employees' authority; and by the failure of any such acts or omissions to be the proximate or legal cause of any injury alleged in the FAC. *See de Villers v. County of San Diego*, 156 Cal.App.4th 238, 251-253, 255-256 (2007).

20. Defendants may not be held liable on a *respondeat superior* theory for any negligent or wrongful act or omission on the part of any subordinate. Cal. Government Code §§ 844.6, 845.6; Cal. Civil Code § 2351; *Malloy v. Fong* (1951) 37 Cal.2d 356, 378-379; *Monell v. Department of Social Services of the City of New York* (1978) 436 U.S. 658; *Larez v. City of Los Angeles* (9th Cir. 1991) 946 F.2d 630, 645-646; *cf. City of Canton v. Harris*, 489 U.S. 378, 388-389 (1989); *City of Los Angeles v. Heller*, 475 U.S. 796 (1986).

**NINTH AFFIRMATIVE DEFENSE**

**(Qualified Immunity & Good Faith Immunity)**

21. Defendant City and its agents or officers at all times relevant to this action acted reasonably and prudently under the circumstances. Defendants therefore assert the individual defendant's Qualified Immunity from liability to the fullest extent applicable.

22. Defendants are immune from liability under the Federal Civil Rights Act

1 because they acted in good faith with an honest and reasonable belief that their actions  
2 were necessary and appropriate. Defendants are immune from liability under the  
3 Federal Civil Rights Act because a reasonable police officer could believe that his  
4 acts and conduct were appropriate. Defendants are immune from liability under the  
5 Federal Civil Rights Act because their conduct did not violate clearly established  
6 rights. Defendants are also immune from liability under the doctrine of Qualified  
7 Immunity.

8 23. At all relevant times, Defendants acted within the scope of discretion,  
9 with due care, and good faith fulfillment of responsibilities pursuant to applicable  
10 statutes, rules and regulation, within the bounds of reason, and with the good faith  
11 belief that their actions comported with all applicable federal and state laws. *Harlow*  
12 *v. Fitzgerald* (1982) 457 U.S. 800; Cal Gov. Code §§ 815.2 and 820.2.

13 **TENTH AFFIRMATIVE DEFENSE**

14 **(Assumption of Risk)**

15 24. At the time and place referred to in the FAC, and before such event,  
16 plaintiff knew, appreciated, and understood each and every risk involved in placing  
17 himself in the position which plaintiff then assumed, and willingly, knowingly and  
18 voluntarily assumed each of such risks, including, but not limited to, the risk of  
19 suffering personal bodily injury, lawful deprivation of right(s), or death.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 **(Standing)**

22 25. Defendants contend that as asserted in this action, in plaintiffs'  
23 individual capacities, plaintiffs lack standing to commence any wrongful death claims  
24 within the meaning of California Code of Civil Procedure § 377.60, et seq., including  
25 but not limited to §§ 377.60 and 377.61, to the extent applicable to decedent's alleged  
26 wrongful death. Plaintiffs have not pleaded any facts sufficient or tending to establish  
27 that plaintiffs are decedent's heirs and/or personal representative as required by  
28 California law.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Bar to Punitive Damages)**

26. As a separate and twelfth affirmative defense to the SAC, and to the purported causes of action set forth therein, Defendants allege Plaintiffs may not recover punitive damages against a governmental entity, or against governmental employees acting in their official capacity, under federal or state law. Cal. Govt. Code § 818; *City of Newport v. Fact Concerts, Inc.* 453 U.S. 247, 271 (1981); *Mitchell v. Dupnik*, 75 F.3d 517, 527 (9th Cir. 1996).

27. At no time and place mentioned in the FAC, did Defendant(s) act with deliberate indifference or malicious intent to deprive any person of any Constitutional or legal right or to cause any other injury and, therefore, Defendant(s) is/are immune from liability.

28. Any claim for punitive damages is unconstitutional and invalid in that it violates the United States Constitution, including but not limited to the Due Process Clause of the Fifth and/or Fourteenth Amendments, as well as the Fifth, Sixth, Eighth, and/or Ninth Amendments.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Unavoidable Detriment)**

29. As a separate and thirteenth affirmative defense to the FAC, and to the purported causes of action set forth therein, Defendants allege that to the extent that any of the plaintiffs suffered any detriment, such detriment was unavoidable.

30. The damages or injuries complained of by Plaintiffs, if any, were the result of an emergency situation, not created by any fault of any Defendants, and into which they suddenly and unexpectedly were placed.

31. The answering Defendant(s) is/are informed and believe and thereon allege that the damages complained of in Plaintiffs' FAC, if any, resulted from an unforeseeable and superseding cause thereby barring either partially or totally Plaintiff's claimed damages herein. The answering Defendant(s) is/are informed and



1 believe and thereon allege that each and all of the purported causes of action and  
2 theories of relief asserted by Plaintiffs in the SAC are barred by virtue of an  
3 independent intervening cause.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 **(Failure to Join Indispensable Party)**

6 32. As a separate and fifteenth affirmative defense to the FAC, and to the  
7 purported causes of action set forth therein, Defendants alleges that Plaintiffs' claims  
8 are barred for failure to join an indispensable party under Federal Rule of Civil  
9 Procedure 19.

10 **FIFTEENTH AFFIRMATIVE DEFENSE**

11 **(Election)**

12 33. As a separate and fifteenth affirmative defense to the FAC, and to the  
13 purported causes of action set forth therein, Defendants allege that at the time of trial,  
14 the answering defendant(s) may elect to limit or diminish plaintiffs' alleged damages  
15 of losses as provided and authorized by California Civil Code § 3333.1, California  
16 Civil Code § 3333.2 and California Code of Civil Procedure § 667.1, and the  
17 provisions of Proposition 51 as enacted into law in the State of California.

18 34. In the event that any of the defendants herein is found to be liable for  
19 damages to any plaintiff, the liability, if any, for any amount of non-economic  
20 damages, if awarded, shall be reduced or limited pursuant to Civil Code § 1431.2, in  
21 direct proportion to each individual answering defendant's percentage of negligence  
22 or fault in relation to the fault of all joint tortfeasors, or other liable persons, whether  
23 joined as defendants or not; and that a separate judgment be rendered against each  
24 answering defendant for such amount.

25 ///

26 **SIXTEENTH AFFIRMATIVE DEFENSE**

27 **(Waiver)**

28 35. As a separate and fifth affirmative defense to the FAC, and to the

1 purported causes of action set forth therein, Defendants allege that Plaintiffs' action  
2 is barred by reason of conduct, actions and inactions of Plaintiffs which amount to  
3 and constitute a waiver of any right Plaintiff may or might have had in reference to  
4 the matters and things alleged in the FAC, or that otherwise estop plaintiff from  
5 recovery in this action, including but not limited to the doctrine of unclean hands.  
6 Moreover, Plaintiffs freely, willingly and voluntarily agreed to clean up the jail cell  
7 at issue in this case, thereby waiving any claim to relief.

8 **SEVENTEENTH AFFIRMATIVE DEFENSE**

9 36. Defendants contend that they cannot fully anticipate all affirmative  
10 defenses that may be applicable to this action based on the conclusory terms used in  
11 plaintiffs' FAC. Accordingly, Defendants expressly reserve the right to assert  
12 additional affirmative defenses if and to the extent that such affirmative defenses  
13 become applicable.

14 **JURY DEMAND**

15 37. Defendants demand a trial by jury as to each issue triable by jury.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, the answering Defendants pray as follows:

- 18 1. That plaintiffs take nothing by this action;  
19 2. That Defendants be awarded attorneys' fees, costs of suit and costs of  
20 proof, and such other relief as the Court deems just.

1 DATED: November 16, 2023

**MANNING & KASS  
ELLROD, RAMIREZ, TRESTER LLP**

4 By: /s/ Deann R. Rivard

5 Eugene P. Ramirez

6 G. Craig Smith

7 Deann R. Rivard

8 Attorneys for Defendants,

9 COUNTY OF RIVERSIDE, RIVERSIDE

COUNTY SHERIFF CHAD BIANCO and

DEPUTY DUNCAN

10 **DEMAND FOR TRIAL BY JURY**

11 Defendants hereby demand a trial of this matter by jury.

13 DATED: November 16, 2023

**MANNING & KASS  
ELLROD, RAMIREZ, TRESTER LLP**

17 By: /s/ Deann R. Rivard

18 Eugene P. Ramirez

19 G. Craig Smith

20 Deann R. Rivard

21 Attorneys for Defendants,

22 COUNTY OF RIVERSIDE, RIVERSIDE

23 COUNTY SHERIFF CHAD BIANCO and

24 DEPUTY DUNCAN